

**Deposition Designations for:  
DAVID AUSTERN  
May 15, 2009**

**Deposition Designation Key**

**Arrowood = Arrowood Indem. Co.  
f/k/a Royal Indem. Co. (Light Green)**

**BNSF = BNSF Railway Co. (Pink)**

**Certain Plan Objectors "CPO" = Government Employees Insurance Co.; Republic Insurance Co.  
n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance  
Co.; Fireman's Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurtà; and Allianz  
SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich  
International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and  
related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal  
Belge SA (Orange)**

**CNA = Continental Cas. Co & Continental Ins. Co. (Red)**

**FFIC = Fireman Funds Ins. Co. (Green)  
FFIC SC = Fireman Funds Ins. Co. "Surety Claims" (Green)**

**GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.**

**Libby = Libby Claimants (Black)**

**OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)**

**PP = Plan Proponents (Blue)**

**Montana = State of Montana (Magenta)**

**Travelers = Travelers Cas. and Surety Cos. (Purple)**

**UCC & BLG = Unsecured Creditors' Committee & Bank Lenders Group (Lavender)**

**AFNE = Assume Fact Not in Evidence**

**AO = Attorney Objection**

**BE = Best Evidence**

**Cum. = Cumulative**

**Ctr = Counter Designation**

**Ctr-Ctr = Counter-Counter**

**ET = Expert Testimony**

**F = Foundation**

**408 = Violation of FRE 408**

**H = Hearsay**

**IH - Incomplete Hypothetical**

**L = Leading**

**LA = Legal Argument**

**LC = Legal Conclusion**

**LPK - Lacks Personal Knowledge**

**LO = Seeking Legal Opinion**

**NT = Not Testimony**

**Obj: = Objection**

**R = Relevance**

**S = Speculative**

**UP = Unfairly Prejudicial under Rule 403**

**V = Vague**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE  
- - -

In Re: : Chapter 11  
:   
: Case No.  
W.R. GRACE & CO., et al, : 01-01139 JKF  
:   
: (Jointly  
Debtors : Administered)

- - -  
Friday, May 15, 2009  
- - -

Oral deposition of DAVID T.  
AUSTERN, ESQUIRE, taken pursuant to  
notice, was held at the offices of ORRICK  
HERRINGTON & SUTCLIFFE, LLP, Columbia  
Center, 1152 15th Street, N.W.,  
Washington, DC 20005-1706, commencing at  
10:07 a.m., on the above date, before  
Lori A. Zabielski, a Registered  
Professional Reporter and Notary Public  
in and for the Commonwealth of  
Pennsylvania.

- - -  
MAGNA LEGAL SERVICES  
Seven Penn Center  
1635 Market Street  
8th Floor  
Philadelphia, Pennsylvania 19103

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CPO

Page 12

1

EXHIBITS (continued)

2

NO. DESCRIPTION PAGE

3

Austern-10

4

Form 8-K 124

5

Austern-11

6

Exhibit 8 to Exhibit Book

7

Best Interests Analysis 156

8

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9

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11

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14

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17

18

19

20

21

22

23

24

1

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2

PROCEEDINGS

3

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4

MR. GUY: We will follow the

5

federal rules.

6

---

7

DAVID T. AUSTERN, ESQUIRE,

8

after having been first duly

9

sworn, was examined and testified

10

as follows:

11

---

12

EXAMINATION

13

---

14

BY MR. BROWN:

15

Q. Good morning, Mr. Austern.

16

My name is Michael Brown. I represent

17

OneBeacon American Insurance Company,

18

Seaton Insurance Company, GEICO, and

19

Republic Insurance Company.

20

Could you state your full

21

name for the record, please?

22

A. David Thomas Austern.

23

Q. Have you ever been deposed

24

before?

Trav.

PP Obj: R

Page 11

CPO

Page 13

1

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2

DEPOSITION SUPPORT INDEX

3

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4

5

Direction to Witness Not to Answer:

6

Page Line Page Line

7

181 13 225 16

8

229 04 239 03

9

10

Request for Production of Documents:

11

Page Line Page Line

12

NONE

13

14

15

Stipulations:

16

Page Line Page Line

17

NONE

18

19

20

Area(s) Marked Confidential:

21

Page Line Page Line

22

NONE

23

24

1

A. Yes.

2

Q. How many times?

3

A. Somewhere between 25 and 30

4

times.

5

Q. So it's fair to say that you

6

are familiar with the protocol for a

7

deposition then?

8

A. I am.

9

Q. Okay. Can you give me a

10

summary of your professional background?

11

A. I was an assistant district

12

attorney in the New York County District

13

Attorney's Office for four years; I was

14

an assistant United States attorney in

15

the United States Attorney's Office in

16

Washington, D.C. for four years; I was a

17

law professor for two years; I was in the

18

private practice of law for something

19

like 12 years; and I've been general

20

counsel of the Manville Personal Injury

21

Settlement Trust, and I have had some

22

other asbestos matters for the last 21

23

and a half years. That doesn't add up to

24

45, and it should, but...

PP Obj: R

Page 14

CPO

1 Q. Those are estimates, I take  
2 it?  
3 A. Those are estimates, yes.  
4 Q. What did you do in  
5 preparation for today's deposition?  
6 A. I reviewed some documents,  
7 and I spoke to counsel.  
8 Q. What documents did you  
9 review?  
10 A. I also reviewed some  
11 transcripts.  
12 I reviewed the Personal  
13 Injury Trust Agreement; the Trust  
14 Distribution Process -- the Personal  
15 Injury Trust Distribution Process; the  
16 Transfer Agreement; the Cooperation  
17 Agreement; I reviewed Ms. Biggs' latest  
18 estimation report; Dr. Peterson's latest  
19 report; Dr. Florence's latest report;  
20 Dr. Whitehouse's -- one of  
21 Dr. Whitehouse's reports -- I am sorry --  
22 two of Dr. Whitehouse's reports; the  
23 rebuttal to those reports from Dr. Welsh  
24 and Dr. Freedman; the objections filed by

PP  
Obj:  
R

Page 15

CPO

1 the Libby claimants and by one or more  
2 insurance companies, and I am not sure I  
3 know which ones; my prior deposition in  
4 this case; my prior deposition in the  
5 Combustion Engineering case; my testimony  
6 in the Combustion Engineering case. I  
7 may have left something out, but I think  
8 those are most of the documents I  
9 reviewed.  
10 Q. Okay. And you also  
11 mentioned that you had reviewed some  
12 transcripts?  
13 A. Those were the depositions  
14 and trial testimony -- oh, excuse me.  
15 Yes. I reviewed Mr. Lockwood's  
16 deposition.  
17 Q. Did you actually review the  
18 Amended Plan of Reorganization?  
19 A. Yes -- and excuse me -- and  
20 the Disclosure Statement.  
21 Q. And over what period of time  
22 did you review all these materials in  
23 preparation for your deposition?  
24 A. Two weeks. I did one other

PP  
Obj:  
R

CPO

Page 16

1 thing in preparation of the deposition.  
2 I listened to parts of, albeit not all,  
3 of the Lockwood deposition.  
4 Q. Did you meet with counsel in  
5 preparation for the deposition?  
6 A. Yes.  
7 Q. When?  
8 A. Last Friday and yesterday.  
9 Q. And for how long last  
10 Friday? What period of time did you meet  
11 with counsel?  
12 A. I confess I don't remember,  
13 but it was several hours.  
14 Q. And the more recent meeting?  
15 A. I would say three hours.  
16 Q. Was it just counsel for the  
17 Future Claimants' Representative or were  
18 other Plan proponent counsel present?  
19 A. No. There were no other  
20 Plan proponent counsel.  
21 Q. In reviewing Mr. Lockwood's  
22 deposition testimony, was there anything  
23 in his transcript with which you  
24 disagreed?

PP  
Obj:  
R

Page 17

1 A. I don't remember -- nothing  
2 occurs to me, although if you showed me a  
3 question and answer, I might say I  
4 disagreed. But I don't recall anything.  
5 Q. Okay. When you listened in  
6 on a portion of the deposition, was there  
7 anything that you heard by way of an  
8 answer by Mr. Lockwood that struck you as  
9 inaccurate?  
10 A. Not that I recall.  
11 Q. Okay. Now, you mentioned  
12 that you had reviewed the Disclosure  
13 Statement, the Plan, the PI Trust  
14 Agreement I assume you were referring to,  
15 the PI Trust Distribution Procedures, the  
16 Transfer Agreement, and the Cooperation  
17 Agreement?  
18 A. Yes.  
19 Q. Do you understand all of  
20 those documents?  
21 A. No.  
22 Q. Are there particular  
23 documents that you understand better than  
24 others?

PP  
Obj:  
R

5 (Pages 14 to 17)



Page 18

LPO

Page 20

PP  
Obj:  
BE;  
F

1 A. Yes.  
2 Q. Which ones?  
3 A. The Trust Distrubution  
4 Process.  
5 Q. By that, you mean the  
6 Asbestos PI Trust Distribution  
7 Procedures?  
8 A. Yes, yes.  
9 Q. Okay.  
10 A. I will refer to it as the  
11 TDP, most likely.  
12 Q. We will finish the  
13 deposition a lot sooner if you do that.  
14 A. And there were some sections  
15 in some of the other documents I thought  
16 I understood and some sections I thought  
17 I did not.  
18 Q. Okay. How about the Trust  
19 Agreement?  
20 A. I believe I understood most  
21 of that.  
22 Q. Okay. You were appointed by  
23 the bankruptcy court as the, quote, legal  
24 representative, close quote, under

1 FCR? I understand that you were approved  
2 by the bankruptcy court, but how were you  
3 presented, if you will, for that role?  
4 A. Understanding I was not in  
5 the case at the time, I can only tell you  
6 what documents I have looked at appear to  
7 say.  
8 Q. Okay.  
9 A. The Debtor presented to the  
10 court a motion of seeking an appointment  
11 of an FCR, provided the court with three  
12 names and an untitled fourth name -- I  
13 will explain that in a moment. The three  
14 names proposed were me and two other  
15 people, and then a statement that the  
16 Property Damage Representatives didn't  
17 want any of the three names mentioned by  
18 the Debtor and wanted some unnamed fourth  
19 person. So there were four, if you will,  
20 potential choices presented to the  
21 bankruptcy court.  
22 Q. Who were the other two named  
23 individuals?  
24 A. Professor Eric Green and

Page 19

LPO

Page 21

PP  
Obj:  
BE;  
F

1 Section 524(g) of the bankruptcy code,  
2 correct?  
3 A. Correct.  
4 Q. When did that occur?  
5 A. Just about this time of year  
6 five years ago.  
7 Q. Okay. So in 2004?  
8 A. Yes.  
9 Q. And, as I understand it,  
10 under the Plan your title is the asbestos  
11 PI FCR, correct?  
12 A. Yes.  
13 Q. And the FCR is for Future  
14 Claimants' Representative?  
15 A. Yes.  
16 Q. You will understand if I  
17 refer to you as the FCR in the  
18 deposition?  
19 A. I will understand what the  
20 reference is.  
21 Q. Okay. You are a  
22 co-proponent of the Plan, correct?  
23 A. Yes.  
24 Q. How did you come to be the

1 Dean Trafelet.  
2 Q. I gather from your answer  
3 that at the time this occurred, it was  
4 contemplated that there would be a single  
5 asbestos trust that would handle both  
6 personal injury claims and property  
7 damage claims?  
8 A. I don't know.  
9 Q. Do you have any idea how the  
10 Debtors came up with the three names that  
11 they did?  
12 A. I know what they said in  
13 their pleading. They said they had  
14 discussed this matter with, well,  
15 obviously, the Property Damage Trust  
16 Representatives that I mentioned, and  
17 they had discussed it with one or more  
18 Creditors Committees and the Asbestos  
19 Claimants Committee.  
20 Q. And then did the bankruptcy  
21 court select you from the list of  
22 contenders for the position?  
23 A. Well, I have left out a  
24 pleading.

PP  
Obj:  
BE;  
F

6 (Pages 18 to 21)

Page 22

1 Q. Okay.  
 2 A. The Asbestos Claimants  
 3 Committee filed a motion, I guess, in  
 4 response to the Debtors motion in which  
 5 they -- I should back up a step.  
 6 The Debtors motion had a  
 7 chart on it, as I recall, which showed  
 8 who opposed various of the names  
 9 mentioned and who was in favor of various  
 10 of the names mentioned, looking at the  
 11 committees. And one of the things that  
 12 was said was that the ACC opposed me and  
 13 wanted Dean Trafelet. The ACC responded  
 14 to that, I believe, saying they did not  
 15 oppose me, but they wanted Dean Trafelet  
 16 rather than me.  
 17 Q. Okay. And did judge  
 18 Fitzgerald then make a decision based  
 19 upon the pleadings you just described?  
 20 A. I don't know what drove her  
 21 decision, but she made a decision and she  
 22 selected me.  
 23 Q. Okay. Now, did you have the  
 24 title FCR with respect to other asbestos

Page 23

1 trusts?  
 2 A. Yes.  
 3 Q. Which ones? Actually, just  
 4 for purposes of that question, I want to  
 5 focus on trusts that are obviously up and  
 6 running as opposed to ones that may be in  
 7 the works.  
 8 A. One other trust, the  
 9 Combustion Engineering Trust.  
 10 Q. And then you mentioned  
 11 earlier that you are the general counsel  
 12 for the Manville Trust?  
 13 A. Yes.  
 14 Q. Is your role as the general  
 15 counsel for the Manville Trust akin to  
 16 your role as the FCR for the Combustion  
 17 Engineering Trust?  
 18 A. No.  
 19 Q. Okay. Can you describe the  
 20 differences in your roles?  
 21 A. Well, first of all, the  
 22 Manville Trust has a Futures Claims  
 23 Representative.  
 24 Q. Okay.

Page 24

1 A. So I certainly don't have  
 2 that role. I advise the trustees -- I am  
 3 the legal advisor to the trustees and  
 4 sometimes trust staff.  
 5 Q. And what is your role as the  
 6 FCR for the Combustion Engineering Trust?  
 7 A. I represent future  
 8 claimants.  
 9 Q. Are you familiar with a term  
 10 "Trust Advisory Committee"?  
 11 A. Yes.  
 12 Q. Is there a Trust Advisory  
 13 Committee for the Combustion Engineering  
 14 Trust?  
 15 A. Yes.  
 16 Q. And who are its current  
 17 members?  
 18 A. Mr. Cooney, Mr. Weitz,  
 19 Mr. Kazan, and there is somebody else.  
 20 And I am not sure who it is.  
 21 Q. With respect to the  
 22 Combustion Engineering Trust, did you  
 23 have the role of future claimants -- let  
 24 me back up. Strike that.

Page 25

1 Did you have the role of  
 2 legal representative, as that term is  
 3 used in Section 524(g) of the bankruptcy  
 4 code?  
 5 A. I believe that was what I  
 6 was, yes.  
 7 Q. Okay. And were you a  
 8 co-proponent of the CE Trust --  
 9 A. Yes.  
 10 Q. The CE Plan?  
 11 A. Yes.  
 12 Q. Putting aside confirmed  
 13 plans and trusts that are up and running,  
 14 are you the designated Future Claimants'  
 15 Representative in connection with any  
 16 pending asbestos bankruptcy cases other  
 17 than the Grace case?  
 18 A. No.  
 19 Q. Are you familiar with the  
 20 statutory requirements for a Section  
 21 524(g) trust?  
 22 A. I am generally familiar. I  
 23 am not sure I can recall each and every  
 24 one right at the moment.

7 (Pages 22 to 25)



Page 26

CPO

1 Q. You have read Section  
2 524(g)?  
3 A. I have.  
4 Q. How many times?  
5 A. Countless times.  
6 Q. Okay. That's what I thought  
7 you would say.  
8 Did you play any role in the  
9 drafting or enactment of Section 524(g)?  
10 A. I met with some legislators  
11 and the staff of some legislators at the  
12 time it was being proposed.  
13 Q. And who were they?  
14 A. Senator Heflin, one of  
15 Senator Heflin's legislative assistants,  
16 counsel to Senator Kennedy. There were  
17 some other staff members of some other  
18 senators that I met with. I am not sure  
19 I can recall them.  
20 Q. Besides meeting with them,  
21 did you have any input in the provisions  
22 that appear in Section 524(g)?  
23 A. I am not sure I know what  
24 you mean by input. I attended --

PP  
Obj:  
R

Page 27

CPO

1 Q. Let me back up.  
2 Did you comment on any  
3 drafts? Did you provide suggestions as  
4 to what the legislation should involve in  
5 terms of requirements for 524(g) trust?  
6 A. No.  
7 Q. Okay. What was the nature  
8 of your input then?  
9 A. I was asked to come answer  
10 questions that they had about the  
11 necessity for 524(g).  
12 Q. Okay. And what, if you  
13 recall, did they specifically ask you?  
14 A. Well, the Manville Trust, of  
15 course, did not have the benefits of a  
16 524(g) injunction, and it frustrated  
17 somewhat dramatically our ability to sell  
18 our Manville stock, which was a very  
19 large percentage of the assets of the  
20 Trust. And they wanted to know why --  
21 because there was another injunction  
22 under Section 105. They wanted to know  
23 why I thought it would be easier to sell  
24 the Manville stock if we had 524(g)

PP  
Obj:  
R

Page 28

CPO

1 protection in addition to whatever  
2 Section 105 gave us.  
3 Q. And what was your rationale  
4 or your response?  
5 A. First of all, we couldn't  
6 sell the stock because people,  
7 prospective purchasers were worried about  
8 Section 105 protection, and that came out  
9 again and again in attempts to sell the  
10 stock. I can't think of any other way of  
11 putting it.  
12 Q. Okay. Other than what you  
13 have just described, did you have any  
14 other input with respect to Section  
15 524(g)'s enactment?  
16 A. No.  
17 Q. All right. In this case,  
18 there are actually two Future Claimants'  
19 Representatives, correct?  
20 A. Yes.  
21 Q. There is the PI FCR and  
22 there is the PD FCR?  
23 A. Yes.  
24 Q. I want to focus on your role

PP  
Obj:  
RPP  
Obj:  
BE;  
R

Page 29

CPO

1 as the PI FCR, obviously, and what I  
2 would like you to do first is to identify  
3 for me the members of the Asbestos PI  
4 Trust Advisory Committee in this case.  
5 A. Well, the members --  
6 Q. The proposed members, I  
7 should say.  
8 A. The members are actually, as  
9 I understand it, individual claimants,  
10 but they are represented by certain  
11 lawyers, who I guess you would say appear  
12 on their behalf. And they are Mr. Budd,  
13 Mr. Cooney, Mr. Weitz, and Mr. Rice.  
14 MR. BROWN: Okay. Could you  
15 read my last question?  
16 (The reporter read from the  
17 record as requested.)  
18 MR. BROWN: Let me back up.  
19 You might have misunderstood my  
20 question, Mr. Austern.  
21 BY MR. BROWN:  
22 Q. I was asking about the Trust  
23 Advisory Committee as opposed to the  
24 asbestos PI Committee. But let's start

PP  
Obj:  
BE;  
R

<p>LPO</p> <p>Page 30</p> <p>1 with what you went through.</p> <p>2 Why don't you tell me who</p> <p>3 the members of the Asbestos PI Committee</p> <p>4 are?</p> <p>5 A. Again, they are claimants,</p> <p>6 but the PI Committee, I believe, is a</p> <p>7 much larger group of people than the ones</p> <p>8 I have just mentioned.</p> <p>9 Q. Right.</p> <p>10 A. And I don't know all the</p> <p>11 people who are on it.</p> <p>12 Q. Okay. Does Mr. Weitz's firm</p> <p>13 have a client that is on the PI</p> <p>14 Committee?</p> <p>15 A. As far as I know, he does.</p> <p>16 Q. And Mr. Cooney's firm?</p> <p>17 A. Yes.</p> <p>18 Q. And Mr. Rice's firm?</p> <p>19 A. Yes.</p> <p>20 Q. And Mr. Budd's firm?</p> <p>21 A. Yes.</p> <p>22 Q. And then there are others?</p> <p>23 A. Yes.</p> <p>24 Q. But you are not sure how</p> <p>PP Obj: BE; R</p> <p>LPO</p>	<p>Page 32</p> <p>1 it is.</p> <p>2 A. It's the amended notice of</p> <p>3 my deposition.</p> <p>4 Q. Okay. And that's the notice</p> <p>5 pursuant to which you are appearing here</p> <p>6 today?</p> <p>7 A. Yes.</p> <p>8 Q. And you received a number of</p> <p>9 other Notices of Deposition from other</p> <p>10 parties?</p> <p>11 A. Yes.</p> <p>12 Q. You can put that aside.</p> <p>13 MR. BROWN: This will be</p> <p>14 Austern-2.</p> <p>15 (Austern-2 marked for</p> <p>16 identification at this time.)</p> <p>17 BY MR. 1234:</p> <p>18 Q. Mr. Austern, you now have</p> <p>19 before you a document that has been</p> <p>20 marked Austern-2. It is Exhibit 2 to the</p> <p>21 Exhibit Book. You will see that there is</p> <p>22 prior exhibit label on it. This document</p> <p>23 was used in Mr. Lockwood's deposition.</p> <p>24 But why don't you tell me</p>
<p>LPO</p> <p>Page 31</p> <p>1 many others?</p> <p>2 A. And I don't know who they</p> <p>3 are.</p> <p>4 Q. Now, let's get to the</p> <p>5 asbestos PI TAC. The members of the</p> <p>6 asbestos PI TAC in this case are who?</p> <p>7 A. Well, I could look at the</p> <p>8 signature page on the Trust Agreement and</p> <p>9 tell you, but some of the people I have</p> <p>10 mentioned.</p> <p>11 Q. Actually, before we do that,</p> <p>12 I neglected to mark your notice. So why</p> <p>13 don't we go back to that.</p> <p>14 MR. BROWN: We will mark</p> <p>15 this as Austern-1.</p> <p>16 (Austern-1 marked for</p> <p>17 identification at this time.)</p> <p>18 BY MR. BROWN:</p> <p>19 Q. Mr. Austern, you have before</p> <p>20 you what's been marked as Austern-1. I</p> <p>21 neglected to do this at the outset of the</p> <p>22 deposition.</p> <p>23 Why don't you review that</p> <p>24 and let me know if you can tell me what</p> <p>PP Obj: BE; R</p> <p>LPO</p>	<p>Page 33</p> <p>1 what this document is?</p> <p>2 A. It is the Asbestos PI Trust</p> <p>3 Agreement.</p> <p>4 Q. Okay. And this is the</p> <p>5 document to which you wanted to refer to</p> <p>6 find the members of the TAC, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. Who are the members</p> <p>9 of the TAC?</p> <p>10 A. I believe I already</p> <p>11 mentioned them: Mr. Budd, Mr. Cooney,</p> <p>12 Mr. Rice, and Mr. Weitz.</p> <p>13 Q. Okay. I am correct, am I</p> <p>14 not, that the members of the TAC were</p> <p>15 selected by the Asbestos PI Committee?</p> <p>16 A. I assume that is true. I</p> <p>17 was not present when they were selected.</p> <p>18 Q. Does the law firm of Baron</p> <p>19 and Budd have clients that have submitted</p> <p>20 claims to the Combustion Engineering</p> <p>21 Trust?</p> <p>22 A. As far as I know.</p> <p>23 Q. Okay. And would your answer</p> <p>24 be the same for Mr. Cooney's firm?</p> <p>PP Obj: R</p> <p>PP Obj: A; BE</p> <p>PP Obj: R; F; S</p>



Page 38 LPO

Page 40

1 MR. BROWN: I couched it as  
 2 does he have an understanding.  
 3 THE WITNESS: I don't know.  
 4 BY MR. BROWN:  
 5 Q. Do you have an understanding  
 6 as to whether Section 524(g) of the  
 7 bankruptcy code requires someone with the  
 8 title Future Claimants' Representative  
 9 after a Plan of Reorganization has been  
 10 confirmed and gone effective?  
 11 MR. GUY: Same objection.  
 12 THE WITNESS: I believe it  
 13 does.  
 14 BY MR. BROWN:  
 15 Q. And what is the basis for  
 16 your belief?  
 17 A. Well, my belief is based on  
 18 Fibreboard and the decision in Fibreboard  
 19 by the Supreme Court. And I don't  
 20 remember if I am confusing that with  
 21 actually what got into the language of  
 22 524(g). But the Supreme Court found  
 23 something of a conflict between present  
 24 claimants and future claimants, or at

1 asbestos trust that is up and running  
 2 that has a two-trust structure, one trust  
 3 involving PI claims and the other  
 4 involving PD claims?  
 5 A. The answer to the first part  
 6 of your question would be yes, but not  
 7 because of that division.  
 8 Q. Okay. What's the division?  
 9 A. Well, I believe that -- I  
 10 believe what I refer to as the  
 11 Halliburton Trust has a number of  
 12 sub-trusts for dispute claims but not the  
 13 differentiation as between property  
 14 damage and otherwise.  
 15 Q. When you say sub-trust, do  
 16 you mean by that sub-funds within a  
 17 single trust?  
 18 A. Yes.  
 19 Q. Okay. As opposed to two  
 20 distinct trusts?  
 21 A. Yes.  
 22 MR. COHN: Michael, I think  
 23 he's referring to silica trust.  
 24 BY MR. BROWN:

PP  
Obj:  
R;  
BE

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1 least potential conflicts, and there was  
 2 a Future Claims Representative or  
 3 essentially a requirement in that case.  
 4 And I think it was transferred into  
 5 524(g).  
 6 Q. If I showed you the language  
 7 of 524(g), would you be able to tell me  
 8 where that is set forth?  
 9 A. If it's not there, I  
 10 wouldn't.  
 11 Q. You are not sure whether  
 12 it's there?  
 13 A. That's right.  
 14 Q. Okay. The Joint Plan in  
 15 this case has two trusts, correct?  
 16 A. Yes.  
 17 Q. It has an Asbestos PI Trust,  
 18 and it has an Asbestos PD Trust. Why?  
 19 A. Well, that's the way the  
 20 Plan proponents have done it. My view of  
 21 this is that property damage claimants  
 22 are different than personal injury  
 23 claimants.  
 24 Q. Are you aware of any other

1 Q. You mentioned the PD claims  
 2 and PI claims are different. They are  
 3 actually treated differently under this  
 4 Joint Plan; are they not?  
 5 A. Yes.  
 6 Q. Can you describe the  
 7 difference between asbestos PI claims and  
 8 asbestos PD claims under the Joint Plan?  
 9 A. I can describe the treatment  
 10 of personal injury claims; I cannot  
 11 describe the treatment of property damage  
 12 claims.  
 13 Q. Can you describe the  
 14 differences?  
 15 A. No, because I can't...  
 16 Q. Do you know whether Section  
 17 524(g) addresses the propriety of a  
 18 two-trust structure of bankruptcy?  
 19 A. I do not.  
 20 Q. Are you familiar with the  
 21 distinction between the term "demand" as  
 22 it's used in 524(g) and "claim" as it's  
 23 used in the bankruptcy code?  
 24 A. No.

PP  
Obj:  
R;  
BEPP  
Obj:  
R

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PP  
Obj:  
R  
PP  
Obj:  
R;  
BE

1 Q. Do you have any  
2 understanding at all of what a demand is?

3 A. In bankruptcy law, no.

4 Q. Who do you understand to be  
5 your constituency?

6 A. Future claimants.

7 Q. Do you have an understanding  
8 that future claimants are the holders of  
9 future demands?

10 A. I don't know.

11 Q. Do you have an understanding  
12 as to whether the Debtors face the  
13 prospect of any future asbestos PD  
14 demands or asbestos PD claims?

15 A. I believe there are  
16 scenarios in which they do.

17 Q. Could you describe them?

18 A. No, but I believe that there  
19 are property damage claims that -- that  
20 the Debtor is responsible  
21 post-confirmation for certain property  
22 damage claims.

23 Q. And that those property  
24 damage claims would fit within what you

1 today, for which you -- strike that.

2 Are there particular  
3 provisions in the Plan that you don't  
4 understand?

5 A. Yes.

6 Q. Are there any that stick out  
7 in your mind in that regard?

8 A. Can I look at the Plan for a  
9 moment?

10 Q. Sure.

11 A. By way of example, 7.15 of  
12 the document.

13 Q. That's one that you do not  
14 understand?

15 A. Well, it's one I have  
16 trouble trying to understand.

17 Q. You are in good company.

18 A. There are other sections of  
19 the Plan and other documents I reviewed  
20 that address insurance issues, which I  
21 have trouble understanding and rely on  
22 counsel to explain to me.

23 Q. Well, as would have it, 7.15  
24 is an area that I wanted to question you

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PP  
Obj:  
R;  
BE

1 understand to be a future property damage  
2 claim as opposed to a current property  
3 damage claim?

4 A. I am not sure.

5 Q. All right.

6 MR. BROWN: We will mark  
7 this Austern-3.

8 (Austern-3 marked for  
9 identification at this time.)

10 BY MR. BROWN:

11 Q. Mr. Austern, you have before  
12 you a document that we have marked  
13 Austern-3.

14 My first question is, can  
15 you identify it?

16 A. It's the first Amended Joint  
17 Plan of Reorganization.

18 Q. And this is one of the  
19 documents you indicated previously that  
20 you reviewed in preparation for this  
21 deposition, correct?

22 A. Yes.

23 Q. Are there particular  
24 provisions in the Plan, as you sit here

1 about. So why don't we turn to that  
2 section.

3 A. (Witness complies with  
4 request.)

5 Q. And why don't you take a  
6 moment to review it. It's not terribly  
7 long.

8 MR. GUY: Is there any  
9 particular section, Michael?

10 MR. BROWN: Well, I have  
11 questions about a few sections, so  
12 it might be easiest if he reads  
13 the whole thing.

14 THE WITNESS: Okay. I have  
15 reviewed it.

16 BY MR. BROWN:

17 Q. Okay. Recognizing that you  
18 don't understand it fully, do you have an  
19 idea of what its intended purpose is?

20 A. Its intended purpose, as I  
21 understand it, is to create insurance  
22 neutrality.

23 Q. And what do you understand  
24 insurance neutrality to be?



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1 A. That the Plan does not  
2 interfere with the rights of the  
3 insurance companies.

4 Q. Okay. Are there any  
5 exceptions to that broad statement, as  
6 you understand Section 7.15?

7 MR. COHN: You might want to  
8 rephrase that because you just  
9 changed from his understanding of  
10 insurance neutrality in the broad  
11 concept to a provision that very  
12 clearly is not what it was  
13 announced to be.

14 MR. BROWN: Can you read the  
15 last question?

16 (The reporter read from the  
17 record as requested.)

18 BY MR. BROWN:

19 Q. You understand Section 7.15  
20 to be intended to preserve the insurers'  
21 rights; is that a fair statement?

22 A. Yes.

23 Q. Okay. Is it your belief  
24 that that's what it accomplishes?

PP  
Obj:  
R;  
BE

LPO

LPO

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LPO

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1 A. I don't know.  
2 (There was a discussion held  
3 off the record at this time.)

4 BY MR. BROWN:

5 Q. Mr. Austern, are you  
6 familiar with the UNR decision in the  
7 Seventh Circuit, the citation to which is  
8 942 F.2d 1101?

9 A. I am familiar with the UNR  
10 Trust. I am not familiar with the  
11 decision.

12 Q. Are you familiar with what  
13 happened in the trial court in the  
14 Fuller-Austin coverage case?

15 MR. GUY: Objection, vague.

16 THE WITNESS: No.

17 BY MR. BROWN:

18 Q. You said you just read  
19 Section 7.15. Let's focus on (a).

20 Is your understanding that  
21 (a) is a preemptory provision with  
22 respect to the Plan, Plan documents, and  
23 Confirmation Order except as specifically  
24 set forth in Section 7.15?

PP  
Obj:  
R;  
BE

Trav.

1 MR. GUY: Objection.

2 MR. LIESEMER: Object to the  
3 form of the question.

4 MR. GUY: It calls for a  
5 legal conclusion. The witness is  
6 a fact witness.

7 MS. BAER: Same objection.

8 THE WITNESS: I am not  
9 positive I know what you mean by  
10 preemptory. You sort of focused  
11 on my problem with 7.15. I don't  
12 know how you read the successive  
13 paragraphs as impacting on each  
14 other.

15 BY MR. BROWN:

16 Q. Do you believe Section 7.15  
17 to be unclear?

18 A. To me.

19 MR. GUY: Objection.

20 BY MR. BROWN:

21 Q. Okay. Well, let's explore  
22 that a little bit.

23 Let's look at Section  
24 7.15(b), and you will see that there is a

PP  
Obj:  
R;  
BE

PP  
Obj:  
R;  
BE

PP  
Obj:  
R;  
BE

PP  
Obj:  
R



<p><b>CPO Trav.</b></p> <p>1 all with any of the Debtors' pre-petition 2 settlements with insurance companies? 3 A. I have seen a list, and 4 that's the extent of my knowledge. 5 Q. Are you aware that at least 6 certain of those insurers have 7 contractual indemnity provisions against 8 the Debtors in those settlement 9 agreements? 10 A. Can you explain to me what 11 you mean by contractual? 12 Q. Sure. I will represent to 13 you that there are settlement agreements 14 that are pre-petition settlement 15 agreements in which the insurer paid a 16 sum of money to the Debtors, and in 17 exchange for paying that money, the 18 Debtors agreed to indemnify the insurer 19 in the event that claims were asserted 20 against the policy after the settlement 21 by other parties. 22 A. Third party claimants? 23 Q. Third parties. 24 Do you understand the term</p> <p><b>PP Obj: R; BE</b></p>	<p>Page 50</p> <p><b>CPO Trav.</b></p> <p>1 BY MR. BROWN: 2 Q. Okay. Let me parse that 3 out. Do you understand certain of the 4 Debtors' insurance companies to have 5 indirect asbestos PI claims? 6 A. They could. They could have 7 the right to file them, yes. 8 Q. Okay. And do you understand 9 those insurers to fit within the phrase 10 in (b), the beneficiaries of the Asbestos 11 PI Trust? In other words, are the 12 insurers that have the contractual 13 indemnity claims against the Debtors, 14 quote, beneficiaries of the Asbestos PI 15 Trust, as that term is used in 7.15(b)? 16 MR. LIESEMER: Object to the 17 form of the question. 18 MR. GUY: Objection, asked 19 and answered, compound. 20 MS. BAER: Same objection. 21 MR. GUY: You may answer. 22 THE WITNESS: As far as I 23 know, they could be under certain 24 circumstances.</p> <p><b>PP Obj: R; BE; F</b></p>
<p><b>CPO Trav.</b></p> <p>1 "indirect PI Trust claims" to include the 2 insurers insofar as they have the type of 3 contractual indemnity claim that I just 4 described? 5 MR. LIESEMER: Object to the 6 form of the question. 7 <b>Trav.</b> MR. GUY: Same objection. 8 THE WITNESS: Mr. Brown, I 9 understand that all asbestos 10 personal injury insurance has been 11 channelled to the Asbestos 12 Personal Injury Trust. And there 13 are settled insurance companies 14 that -- how would I describe it -- 15 their obligations have been 16 settled with the Debtor; there are 17 unsettled ones; and then there are 18 those that have coverage in place 19 agreements or reimbursement 20 agreements. 21 I don't know where your 22 question fits into my 23 understanding of those buckets of 24 insurance entities.</p> <p><b>PP Obj: R; BE</b></p>	<p>Page 51</p> <p><b>CPO Trav.</b></p> <p>1 BY MR. BROWN: 2 Q. All right. Then I would now 3 like you to compare the language in (a) 4 and the language in (b) based on the 5 assumption that they are. 6 MR. GUY: Now I am confused. 7 MR. BROWN: Anyone who reads 8 this provision is confused. 9 MR. GUY: I am confused. 10 It's talking -- 11 THE WITNESS: You are asking 12 me to compare (a) to (b) or (b) to 13 (a)? 14 MR. GUY: For what purpose? 15 BY MR. BROWN: 16 Q. If the insurer that I just 17 described is a beneficiary of the 18 Asbestos PI Trust, then, according to 19 (b), it is bound by the Plan, the Plan 20 documents, and the Confirmation Order, 21 correct? 22 A. That's what (b) says, yes. 23 Q. So does (b) then supersede 24 subsection (a)?</p> <p><b>PP Obj: R; BE; F</b></p>

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CPO

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CPO

1 A. I don't know.  
2 Q. Let's go to a defined term  
3 in the Plan which appears on page 6,  
4 number 16, quote, asbestos insurer  
5 coverage defenses. Take a moment to  
6 review that provision.

PP  
Obj:  
R;  
BE;  
F

7 MR. GUY: So that I don't  
8 have to repeat it throughout, I am  
9 going to enter a standing  
10 objection. The witness is here  
11 not as a 30(b)(6) witness on  
12 insurer issues, and the Plan says  
13 what it says.

14 MR. BROWN: I understand.

15 MR. COHN: Can you keep your  
16 voice up, Tom?

17 MR. GUY: We will go off the  
18 record.

19 (There was a discussion held  
20 off the record at this time.)

21 BY MR. BROWN:

22 Q. Have you had a chance to  
23 review the definition of asbestos insurer  
24 coverage defenses?

PP  
Obj:  
R;  
BE

1 Q. Okay. My question is, do  
2 you have an understanding as to whether  
3 the language in 7.15(a) supersedes the  
4 language in 11.9?

5 A. I don't know.

6 Q. Do you know whether it's  
7 intended to?

8 A. No.

9 Q. Reading both of those  
10 provisions, do you understand whether it  
11 does?

12 MR. GUY: Objection, calls  
13 for a legal conclusion.

14 MR. BROWN: It just calls  
15 for his understanding.

16 THE WITNESS: Mr. Brown, I  
17 must confess to you when I read  
18 11.9 both the first time and the  
19 second time, what I concentrated  
20 on was on the fact that I had  
21 exculpation, and I didn't  
22 concentrate very much more.

23 BY MR. BROWN:

24 Q. So you have been exculpated

PP  
Obj:  
R;  
BE

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CPO

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CPO

1 A. Yes.  
2 Q. Do you understand it?  
3 A. No.  
4 Q. Fair enough. You are not  
5 alone.

PP  
Obj:  
R;  
BE

6 Let's get back to 7.15.

7 A. Can you give me the page  
8 again?

9 Q. I am sorry. It's page 87.  
10 Actually, what I would like to do is I  
11 want to do a comparison. Can you also  
12 look at Section 11.9? You might want to  
13 take a moment to read 11.9.

14 A. Can you give me a page  
15 number?

16 Q. Yes. Page 115, Section 11.9  
17 entitled Exculpation.

18 A. Okay.

19 Q. If you keep that page handy  
20 and go back and look at Section 7.15, I  
21 will represent to you, feel free to look  
22 yourself, that there is no specific  
23 reference in 7.15 to Section 11.9.

24 A. I believe that's correct.

PP  
Obj:  
R;  
BE

1 if the Plan is confirmed?

2 A. Yes.

3 Q. Let's just use that as an  
4 example, not to pick on you, but since  
5 you understand at least that much in  
6 11.9.

7 Insofar as an insurer had a  
8 claim against you, would you still be  
9 exculpated in light of Section 7.15 as  
10 you understand it?

11 MR. LIESEMER: Object to the  
12 form of the question.

13 MR. GUY: Objection, calls  
14 for a legal conclusion.

15 THE WITNESS: The first part  
16 of the answer is that in the Trust  
17 Agreement, I also have what is not  
18 labeled as exculpation but  
19 indemnification rights, not  
20 including gross negligence.

21 The answer is I don't know  
22 the answer to that question.

23 BY MR. BROWN:

24 Q. Does that concern you?

PP  
Obj:  
R;  
BE

PP  
Obj:  
R;  
BE



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Page 60

1 A. Does a possible conflict of  
2 7.15 to 11.9 concern me?  
3 Q. Well, yes.  
4 A. No.  
5 Q. Okay. Would you go back to  
6 Section 7.7 of the Plan?  
7 A. Did you say 7.7?  
8 Q. Yes. 7.7 entitled  
9 Conditions to Occurrence of the  
10 Confirmation Date.  
11 MR. GUY: What page is that?  
12 MR. BROWN: I am sorry. It  
13 starts on page 69, and there are a  
14 lot of conditions. So it runs to  
15 page 81.  
16 THE WITNESS: Okay.  
17 BY MR. BROWN:  
18 Q. You are free to look at  
19 that, if you want, but I understand you  
20 have already reviewed the Plan.  
21 A. Yes.  
22 Q. My question is, do you have  
23 an understanding as to whether Section  
24 7.15 entitled Insurance Neutrality

PP  
Obj:  
R;  
BE

CPD

1 MR. GUY: Objection.  
2 MR. LIESEMER: I join in  
3 that objection.  
4 MR. GUY: It calls for a  
5 legal conclusion.  
6 THE WITNESS: I don't know.  
7 BY MR. BROWN:  
8 Q. Okay. Can you now look at  
9 7.15(h)?  
10 A. Did you say (e)?  
11 Q. (H). It appears on page 88.  
12 A. Yes.  
13 Q. Do you understand 7.15(h) to  
14 bind all of the Debtors' insurers to all  
15 of the releases and injunctions set forth  
16 in the Plan?  
17 MR. GUY: Objection, calls  
18 for a legal conclusion.  
19 THE WITNESS: I don't know.  
20 BY MR. BROWN:  
21 Q. Let's go to page 97 of the  
22 Plan, Section 8.5 entitled Successor  
23 Claims Injunction.  
24 MR. GUY: When you get to a

PP  
Obj:  
R;  
BE

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1 preempts Section 7.7 insofar as the  
2 Debtors's insurers are concerned?  
3 MR. GUY: Objection, calls  
4 for a legal conclusion.  
5 THE WITNESS: I don't know.  
6 BY MR. BROWN:  
7 Q. Okay. If you look at  
8 Section 7.8, which begins on page 81,  
9 that one is entitled Conditions to  
10 Occurrence of the Effective Date.  
11 If I asked you the same  
12 question, would your answer be the same  
13 with respect to Section 7.8?  
14 A. Can I look at 7.8 for a  
15 moment?  
16 Q. Sure.  
17 A. I am sorry. Could you  
18 repeat the question?  
19 Q. Let me see if I can rephrase  
20 it. My question is whether the  
21 preemptory language that appears in  
22 Section 7.15(a) preempts the conditions  
23 set forth in Section 7.8, as understand  
24 it?

PP  
Obj:  
R;  
BE

PP  
Obj:  
R;  
BE

CPD

1 point for a break, can we take  
2 one?  
3 MR. BROWN: Why don't we do  
4 that right now.  
5 (There was a break from  
6 11:03 a.m. to 11:13 a.m.)  
7 (The reporter read from the  
8 record as requested.)  
9 BY MR. BROWN:  
10 Q. Mr. Austern, I don't know if  
11 you have had a chance to review that  
12 section during the break, but if not, can  
13 you take a look at it?  
14 A. Yes, I have reviewed this.  
15 Q. Do you have an understanding  
16 as to the purpose of the successor claims  
17 injunction?  
18 MR. LIESEMER: Object to the  
19 form of the question.  
20 THE WITNESS: Well, as its  
21 name implies, it is intended to  
22 enjoin certain conduct. Beyond  
23 that, I, of course, was not part  
24 of this case when either the

PP  
Obj:  
R;  
BE

PP  
Obj:  
R;  
BE



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CPO

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1 Sealed Air or the Fresenius  
2 actions were commenced and  
3 concluded and settled.  
4 BY MR. BROWN:  
5 Q. Do you understand the  
6 Fresenius indemnified parties and the  
7 Sealed Air indemnified parties to be the  
8 beneficiaries of the successor claims  
9 injunction?  
10 A. I believe they are.  
11 Q. Okay. The successor claims  
12 injunction is a 105 injunction, correct?  
13 A. Correct. It's not a 524(g)  
14 injunction.  
15 Q. I gather from your answer  
16 that you understand the difference  
17 between a Section 105 injunction and a  
18 Section 524(g) injunction?  
19 A. To the extent that Manville  
20 had only a Section 105 injunction, yes.  
21 Q. Okay. Do you have an  
22 understanding as to whether the successor  
23 claims injunction enjoins any claims that  
24 are asbestos-related claims?

PP  
Obj:  
R;  
BE

CPO

1 Q. The successor claims  
2 injunction by its terms cannot be lifted?  
3 A. It cannot, as I understand  
4 it.  
5 Q. If a claim fits within the  
6 definition of the successor claim, as  
7 that term is defined in the Plan, do you  
8 understand the successor claims  
9 injunction to enjoin that claim?  
10 MR. LIESEMER: Object to the  
11 form of the question.  
12 MR. GUY: Same objection.  
13 MS. BAER: Same objection.  
14 THE WITNESS: I don't know.  
15 BY MR. BROWN:  
16 Q. Let's turn back for a moment  
17 to asbestos PI channelling injunction,  
18 page 90, Section 8.2.  
19 A. Okay.  
20 Q. Do you understand the  
21 asbestos PI channelling injunction to be  
22 purely a 524(g) injunction?  
23 MR. GUY: Objection.  
24 THE WITNESS: I don't know.

PP  
Obj:  
R;  
BEPP  
Obj:  
R; BE;  
F; SPP  
Obj:  
R; BE;  
F; S

Page 63

CPO

Page 65

1 MR. GUY: Objection, calls  
2 for a legal conclusion.  
3 THE WITNESS: Do you mean  
4 asbestos personal injury, or no?  
5 BY MR. BROWN:  
6 Q. Could be, or any other type  
7 of asbestos-related claim.  
8 A. I am not sure.  
9 Q. Do you understand there to  
10 be a problem with using a Section 105  
11 injunction to enjoin asbestos-related  
12 claims?  
13 MR. GUY: Objection, vague  
14 as to problem.  
15 MR. LIESEMER: I join in the  
16 objection.  
17 THE WITNESS: There are  
18 certain 105 injunctions that can  
19 be lifted. I assume you cannot do  
20 that with a 524(g) injunction as  
21 it is inexorably intertwined with  
22 the Plan itself. I don't know of  
23 any other distinctions.  
24 BY MR. BROWN:

PP  
Obj:  
R;  
BEPP  
Obj:  
R;  
BE

1 I don't know if it is or not.  
2 BY MR. BROWN:  
3 Q. All right. Mr. Austern, I  
4 want to shift gears here and turn back to  
5 the Asbestos PI Trust Agreement, which we  
6 marked as Austern-2. And I would like to  
7 direct your attention to Section 6.1.  
8 And you are going to want a page.  
9 A. It's 34.  
10 Q. In 6.1, the second sentence  
11 says, "He shall serve in a fiduciary  
12 capacity, representing the interests of  
13 the holders of future PI Trust Claims for  
14 the purpose of protecting the rights of  
15 such persons."  
16 Do you see that?  
17 A. Yes.  
18 Q. And the "he" there is you,  
19 correct?  
20 A. Yes.  
21 Q. What do you understand your  
22 obligations to be to the holders of  
23 future PI Trust claims?  
24 A. I represent them, and, as to

PP  
Obj:  
R;  
BE

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1 them, I am a fiduciary.

2 Q. Okay. And what is the  
3 nature of your fiduciary duties?

4 A. To make sure the Trust has  
5 sufficient funds and the funds to pay  
6 them.

7 Q. Anything else?

8 A. It's more than to just pay  
9 them. It's to pay them in the same  
10 manner that people who preceded them were  
11 paid.

12 Q. Is that all future  
13 claimants?

14 A. It's all future personal  
15 injury claimants.

16 Q. Does it matter whether they  
17 have meritorious claims or not?

18 A. Oh, I don't know. I  
19 haven't -- if it's not a meritorious  
20 claim -- let me back up a second. These  
21 claimants are people I have never met,  
22 and I dare say the day I meet them, they  
23 are no longer my clients.

24 Q. It's a convenient

PP  
Obj:  
R;  
BE

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1 arrangement.

2 A. I am principally responsible  
3 for making sure there are funds available  
4 to pay them in the same manner in which  
5 claimants in the FIFO Queue of the Trust  
6 were paid. In that respect, I have a  
7 fiduciary obligation to them.

8 Q. Okay. Can you turn to  
9 Section 5.2 of the Trust Agreement, and  
10 that appears on page 28.

11 A. Yes.

12 Q. Now, the first sentence of  
13 Section 5.2 says, "The members of the TAC  
14 shall serve in a fiduciary capacity  
15 representing all holders of present PI  
16 Trust Claims." And we have already gone  
17 through earlier the members of the TAC:  
18 Mr. Weitz, Mr. Cooney, Mr. Rice, and  
19 Mr. Budd.

20 Do you have an understanding  
21 as to what their fiduciary duties are to  
22 all holders of present PI Trust claims?

23 A. All holders of present PI  
24 Trust claims?

PP  
Obj:  
R;  
BE

1 Q. Yes. I am just reading from  
2 Section 5.2.

3 A. They are, as I am to some  
4 extent, an advisor to the trustees who  
5 are there to protect the rights of  
6 present claimants.

7 Q. Okay. And when you say  
8 present claimants, all present claimants,  
9 right?

10 A. Yes.

11 Q. If you compare the language  
12 in the second sentence of 6.1 with the  
13 first sentence in 5.2, the wording is a  
14 little different.

15 Do you see that?

16 A. Yes.

17 Q. What's the reason for the  
18 different wording, if you know?

19 MR. LIESEMER: Object to the  
20 form of the question.

21 MR. GUY: Objection as to  
22 what difference you are referring  
23 to.

24 BY MR. BROWN:

PP  
Obj:  
R;  
BE

PP  
Obj:  
R;  
BE;  
F

PP  
Obj:  
R;  
BE;  
F

1 Q. Okay. In 6.1, it says that  
2 "he," meaning you, "shall serve in a  
3 fiduciary capacity," and then it goes on  
4 to say, "representing the interest of  
5 holders of future PI Trust Claims..."

6 Do you see that?

7 A. Yes.

8 Q. And then there is another  
9 phrase, and it says, "for the purpose of  
10 protecting the rights of such persons."

11 Do you see that?

12 A. Yes.

13 Q. Now, if you go to 5.2, that  
14 latter phrase, "for the purpose of  
15 protecting the rights of such persons,"  
16 is not there.

17 Is there a reason?

18 A. I don't know.

19 Q. Do you understand the TAC  
20 members to have the same fiduciary  
21 obligations to all holders of present PI  
22 Trust claims that you have to all holders  
23 of future PI Trust claims?

24 MR. LIESEMER: Object to the

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1 form of the question.  
 2 THE WITNESS: Well, I don't  
 3 think 6.1 says "all," but I will  
 4 accept the way you phrased it.  
 5 BY MR. BROWN:  
 6 Q. Okay.  
 7 A. I can't think of any  
 8 difference, as I sit here now, in terms  
 9 of -- it's a different population, but  
 10 other than that, I can't I can't think of  
 11 any difference.  
 12 Q. You rightly noted that the  
 13 word "all" does not appear in 6.1.  
 14 Is there any particular  
 15 reason for that?  
 16 A. Not that I know of.  
 17 Q. Let me ask you a more  
 18 general question. What is the purpose of  
 19 the TAC?

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20 MR. LIESEMER: Object to the  
 21 form of the question.  
 22 THE WITNESS: To advise the  
 23 trustees with respect to present  
 24 claimants and the operation of the

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1 Trust.  
 2 BY MR. BROWN:  
 3 Q. And what do you mean by  
 4 advise?  
 5 A. Well, present their views to  
 6 the trustees and under some  
 7 circumstances, in the Trust Agreement,  
 8 either give or do not give their consent  
 9 to certain trustee action.  
 10 Q. Is there a reason why the  
 11 TAC members are personal injury asbestos  
 12 lawyers?  
 13 A. I can give you my personal  
 14 view.  
 15 Q. Okay.  
 16 A. They represent the  
 17 beneficiaries of the Trust, and I don't  
 18 know who else you would appoint.  
 19 Q. You are familiar, are you  
 20 not, with the consultation provisions  
 21 that appear in Section 2.2(e) of the  
 22 Trust Agreement, correct?  
 23 MR. GUY: What page?  
 24 MR. BROWN: Page 10.

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1 MS. ALCABES: Page 10.  
 2 THE WITNESS: Yes.  
 3 BY MR. BROWN:  
 4 Q. Why don't you tell me what  
 5 the general purpose of the consultation  
 6 provisions is for? Well, it's actually  
 7 for the TAC and for the Futures'  
 8 Representative.  
 9 A. There are a lot of decisions  
 10 trustees have to make. This is  
 11 consultation, not carving out consent for  
 12 a moment, in terms of investments, in  
 13 terms of selecting vendors, in terms of  
 14 things that are not in the Trust  
 15 Distribution Process, and that  
 16 consultation is described in (e).  
 17 Q. Okay. You mentioned in your  
 18 answer the consent provisions.  
 19 A. There are consent  
 20 provisions.  
 21 Q. And those appear in (f),  
 22 correct, on page 11?  
 23 A. Yes.  
 24 Q. What is the rationale for

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1 the consent provisions that appear in the  
 2 Trust Agreement?  
 3 A. As distinguished from  
 4 consultation?  
 5 Q. Or as distinguished from not  
 6 having them at all?  
 7 A. As I understand it, there  
 8 are certain decisions that trustees make  
 9 that are so important, they can only be  
 10 made with the consent of both the TAC and  
 11 the Future Claims Representative.  
 12 Q. And that was a negotiated  
 13 term of the overall Plan, correct?  
 14 A. Well, it's been negotiated a  
 15 lot before, and I am not sure if any  
 16 specific provision was negotiated in this  
 17 Plan.  
 18 Q. Why can't the trustees make  
 19 these decisions on their own?  
 20 MR. GUY: Objection as to  
 21 "these decisions."  
 22 MR. BROWN: Well, let's back  
 23 up.  
 24 BY MR. BROWN:

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19 (Pages 70 to 73)



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1 Q. You will agree with me that  
2 Section 2.2(f) sets forth a number of  
3 different items for which the trustees  
4 need the consent of the TAC and the  
5 Future Claimants' Representative,  
6 correct?

7 A. Yes.

8 Q. It goes on from Romanette I  
9 to Romanette 15, correct?

10 A. Yes.

11 Q. Why is there a need to have  
12 the consent of the Future Claimants'  
13 Representative and the TAC on these  
14 particular items rather than simply  
15 consultation?

16 A. My answer is the same, and I  
17 will speak forgetting the TAC, as the  
18 Future Claimants' Representative, I want  
19 the right to under certain circumstances  
20 not agree to a decision by the trustees  
21 and have that be the end of the decision.

22 Q. Well, it's not actually the  
23 end of the decision, is it?

24 A. No. There are ways of

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1 resolving that difference.

2 Q. And what are those?

3 A. Well, I may confuse this  
4 with the Manville Trust, but you can  
5 seek, shall we say, guidance from the  
6 bankruptcy court.

7 Q. By that, you mean a ruling?

8 A. Yes, yes.

9 Q. If your consent has been  
10 unreasonably withheld in the views of the  
11 trustees?

12 A. That's correct.

13 Q. Is there anything in Section  
14 524(g) to your knowledge that requires a  
15 Trust, an asbestos Trust, to have a  
16 consultation and consent provisions that  
17 are set forth in this Trust Agreement?

18 A. I do not know of anything in  
19 524(g) like that.

20 Q. Do you know who the  
21 designated trustees are for the Asbestos  
22 PI Trust?

23 A. Yes.

24 Q. Okay. Who are they? Or

1 list of them.

2 A. Dean Trafelet, Lewis  
3 Sifford, and Harry Huge.

4 Q. And do you know each of  
5 those gentlemen?

6 A. Well, in the case of  
7 Mr. Huge and Mr. Trafelet, I do know  
8 them. In the case of Mr. Sifford, I have  
9 met him on a number of occasions.

10 Q. Okay. What is the  
11 professional background of Mr. Huge?

12 A. Let's see. I first met him  
13 about 40 years ago at the Justice  
14 Department. I am sorry. He is a lawyer.  
15 He has been with the government. He has  
16 been in private practice. Do you want  
17 more?

18 Q. Does he have experience with  
19 asbestos trusts?

20 A. Yes, he does.

21 Q. What is that experience?

22 A. He is a trustee of Armstrong  
23 and I believe a trustee of OCF.

24 Q. How long has he had the role

1 of trustee in Armstrong?

2 A. I met with him shortly after  
3 he was appointed, and I should be able to  
4 remember that. I think four or five  
5 years.

6 Q. And how about as a trustee  
7 in OCF?

8 A. I don't know.

9 Q. Okay. Why don't you tell me  
10 what the professional background of  
11 Mr. Sifford is?

12 A. I know him less well.  
13 Mr. Sifford is a practicing lawyer in a  
14 law firm, and he is an Armstrong trustee,  
15 I believe. And that's, I believe, the  
16 first time I met him, and thus I looked  
17 him up. And according to  
18 Martindale-Hubbell, he does both personal  
19 injury plaintiff's work and personal  
20 injury defense work. I am getting close  
21 to exhausting my knowledge of him.

22 Q. Okay. Is the personal  
23 injury work that he does, both defense  
24 and plaintiff's work, asbestos-related?

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1 A. It is not as far as I know.  
 2 Q. Do you know what it does  
 3 relate to?  
 4 A. No.  
 5 Q. Okay. Do you know how long  
 6 he has been a trustee of the Armstrong  
 7 Trust?  
 8 A. The same period of time  
 9 Mr. Huge has been, but I don't remember  
 10 when that started.  
 11 Q. I thought you said that one  
 12 was four to five years ago?  
 13 A. Four to five years ago. I  
 14 don't remember exactly.  
 15 Q. All right. And what is the  
 16 professional background of Mr. Trafelet?  
 17 A. Before I get to that, let me  
 18 explain. Armstrong was confirmed, and  
 19 for a long time, there was no activity  
 20 for reasons that allude me. So I can't  
 21 remember exactly when I got involved in  
 22 talking to those people.  
 23 Q. Okay.  
 24 A. Mr. Trafelet is a lawyer who

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1 Q. And would I be correct that  
 2 he's been that for four or five years?  
 3 A. Yes.  
 4 Q. Let's go to Section 4.9 of  
 5 the Trust Agreement. Take a moment to  
 6 read that, if you would.  
 7 A. Okay.  
 8 Q. The second-to-the-last  
 9 sentence in Section 4.9 says, "No Trustee  
 10 shall act as an attorney for any person  
 11 who holds an asbestos claim."  
 12 Do you see that?  
 13 A. Yes.  
 14 Q. What's the reason for that?  
 15 A. To avoid conflicts.  
 16 Q. What type of conflicts?  
 17 A. Well, you are a trustee of a  
 18 Plan paying somebody; you shouldn't be  
 19 paying your client.  
 20 Q. Is there any other reason?  
 21 A. Not that I know of.  
 22 MR. BROWN: Mark this as  
 23 Austern-4.  
 24 (Austern-4 marked for

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1 was a judge of, I believe, the Circuit  
 2 Court in Cook County, Illinois for a  
 3 period of time, and he is an asbestos  
 4 trustee of -- it seems to me, he is the  
 5 sole trustee of the Loomis Trust and also  
 6 a Futures Rep, I believe, at Armstrong.  
 7 Q. Okay. And he was one of the  
 8 gentlemen that you mentioned that, if I  
 9 remember correctly, the Asbestos PI  
 10 Committee, otherwise known as the ACC,  
 11 wanted to have the role that you have?  
 12 A. Yes.  
 13 Q. Do you know how long he has  
 14 been a trustee of the Loomis Trust?  
 15 A. Since it was confirmed. And  
 16 this I really should know, but I think it  
 17 was confirmed about three years ago.  
 18 Q. Okay. And do you know  
 19 whether he was the FCR in Armstrong  
 20 before a plan was confirmed?  
 21 A. I do not know.  
 22 Q. Okay. But he is the FCR for  
 23 the Trust?  
 24 A. Yes, I believe he is.

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1 identification at this time.)  
 2 BY MR. BROWN:  
 3 Q. Exhibit-4, Mr. Austern, is  
 4 Exhibit 6 to the Exhibit Book. My first  
 5 question for you is, can you identify it?  
 6 A. It's the Asbestos Insurance  
 7 Transfer Agreement, which is part of the  
 8 Plan, as you point out.  
 9 Q. And I believe you said this  
 10 is one of the documents that you had  
 11 reviewed; am I correct?  
 12 A. Yes.  
 13 Q. Do you understand this  
 14 agreement?  
 15 A. Not in its entirety.  
 16 Q. Okay. Are there particular  
 17 provisions of this agreement that you do  
 18 not understand that you could direct my  
 19 attention to?  
 20 A. Well, I would have to look  
 21 at it for a moment. I am not sure I  
 22 understand all of the representations and  
 23 warranties and some of the terms in them.  
 24 There are two schedules, if I remember

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Obj:  
R



<p>Page 82</p> <p>CPO</p> <p>1 correctly, here.</p> <p>2 Q. I think there is three.</p> <p>3 A. All right. I was never</p> <p>4 quite sure I understood the constant or</p> <p>5 individual differences between the</p> <p>6 Schedules 2 and 3.</p> <p>7 Q. Okay. Other than what you</p> <p>8 what you just described, do you generally</p> <p>9 have a good handle on the Asbestos</p> <p>10 Insurance Transfer Agreement?</p> <p>11 A. I wouldn't describe it as a</p> <p>12 good handle, but I recognize some of the</p> <p>13 paragraphs.</p> <p>14 Q. All right. Let me direct</p> <p>15 your attention -- let's look at Section 1</p> <p>16 on page 2, and you should probably look</p> <p>17 at subsection (a). And then (d) is the</p> <p>18 one I have the question on.</p> <p>19 A. Yes.</p> <p>20 Q. In (d), it says, "The</p> <p>21 Transfer is not an assignment of any</p> <p>22 insurance policy."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>PP Obj: R</p>	<p>Page 84</p> <p>CPO</p> <p>1 A. In general.</p> <p>2 Q. Could you describe for me</p> <p>3 what some of those duties are?</p> <p>4 A. Well, you have to report</p> <p>5 claims.</p> <p>6 Q. Okay.</p> <p>7 A. And you have to, under</p> <p>8 certain policies, confer with the</p> <p>9 insurance company about what you are</p> <p>10 settling and why and for how much. And,</p> <p>11 forgetting individual policies for a</p> <p>12 minute, under corporate policies, there</p> <p>13 are certain audit rights that sometimes</p> <p>14 exist as a condition of payment to the</p> <p>15 insured.</p> <p>16 Q. Are you familiar with the</p> <p>17 requirement in some policies that the</p> <p>18 insurer have a right to defend the</p> <p>19 insured?</p> <p>20 MR. LIESEMER: Object to</p> <p>21 form.</p> <p>22 THE WITNESS: As well as an</p> <p>23 obligation.</p> <p>24 BY MR. BROWN:</p> <p>PP Obj: R; BE</p> <p>PP Obj: R; BE</p>
<p>Page 83</p> <p>CPO</p> <p>1 Q. What is it?</p> <p>2 A. It's an assignment of a --</p> <p>3 do you mean what is the Transfer</p> <p>4 Agreement?</p> <p>5 Q. Yes. What is the transfer,</p> <p>6 which is a defined term?</p> <p>7 A. Being transferred?</p> <p>8 Q. Yes.</p> <p>9 A. The proceeds.</p> <p>10 Q. Anything else?</p> <p>11 A. Well, I confess as the</p> <p>12 Futures Claims Rep, I never got past the</p> <p>13 proceeds because the money was what</p> <p>14 interested me.</p> <p>15 Q. Okay. Have you reviewed any</p> <p>16 of the Debtors' insurance policies?</p> <p>17 A. No.</p> <p>18 Q. Have you ever reviewed a</p> <p>19 general liability insurance policy?</p> <p>20 A. Yes.</p> <p>21 Q. Do you have a general</p> <p>22 understanding as to the duties and</p> <p>23 obligations of an insured under general</p> <p>24 liability insurance policy?</p> <p>PP Obj: R; BE</p> <p>PP Obj: R</p>	<p>Page 85</p> <p>CPO</p> <p>1 Q. Okay. And are you aware</p> <p>2 that in some policies there is a right on</p> <p>3 the part of the insurer to associate in</p> <p>4 the defense of the insured?</p> <p>5 MR. LIESEMER: Object to</p> <p>6 form.</p> <p>7 THE WITNESS: I am not sure</p> <p>8 I am familiar with that.</p> <p>9 BY MR. BROWN:</p> <p>10 Q. Okay. Well, you indicated</p> <p>11 that the one thing you knew that was</p> <p>12 being transferred was proceeds.</p> <p>13 Are you aware of anything</p> <p>14 else that's being transferred pursuant to</p> <p>15 the Asbestos Insurance Transfer</p> <p>16 Agreement?</p> <p>17 A. I am not sure what you mean</p> <p>18 by anything else, other than the money.</p> <p>19 Q. That's it?</p> <p>20 A. Well, other things may be</p> <p>21 being transferred, but I can't think of</p> <p>22 anything right now.</p> <p>23 Q. Okay. Do you have an</p> <p>24 understanding as to whether the Asbestos</p> <p>PP Obj: R; BE; F</p> <p>PP Obj: R; BE; F</p>